

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

Credence, LLC	
t/a Legends	Fact-
1836 Columbia Road, NW	Finding
Retailer CR - ANC-1C	Hearing
License No. 86083	

(License in Extended
Safekeeping)

May 1, 2014

The Alcoholic Beverage Control
Board met in the Alcoholic Beverage Control
Hearing Room, Reeves Building, 2000 14th
Street, N.W., Suite 400S, Washington, D.C.
20009, Chairperson Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
HERMAN JONES, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member

P-R-O-C-E-E-D-I-N-G-S

(5:13 p.m.)

CHAIRPERSON MILLER: Our 5:00

Fact-Finding Hearing concerns Legends. Is
somebody here for Legends? Okay. Okay. Our
5:00 is Legends and the licensee isn't here,
in which we could hear from Mr. Gordy again or
we can pass and take our 5:30.

MEMBER ALBERTI: Let's --

CHAIRPERSON MILLER: Mr. Gordy, do
you want to come --

MEMBER JONES: Mr. Gordy, would
you come up here, please?

MEMBER ALBERTI: Yes, Mr. Gordy?

MEMBER JONES: Mr. Gordy?

MR. GORDY: Yes.

MEMBER JONES: Would you mind
coming up here again, please?

MEMBER ALBERTI: I have no
problem.

CHAIRPERSON MILLER: We haven't
heard from the licensee that they are on their

1 way or anything, I gather, right? Okay.

2 So I've called the Legends case.

3 I wonder if you could identify yourself for
4 the record again?

5 MR. GORDY: Sure.

6 CHAIRPERSON MILLER: Okay.

7 MR. GORDY: My name is Sean Gordy.

8 CHAIRPERSON MILLER: Okay. And
9 your position with the Agency?

10 MR. GORDY: And I am the Licensing
11 Division Manager for Alcoholic Beverage
12 Regulation Administration.

13 CHAIRPERSON MILLER: Okay. Sir,
14 are you prepared to address, at this time, the
15 license in safekeeping for Legends?

16 MR. GORDY: Yes.

17 CHAIRPERSON MILLER: Okay. All
18 right. Is it correct that it has been in
19 safekeeping since July of 2005?

20 MR. GORDY: That is correct.

21 CHAIRPERSON MILLER: Okay. I
22 think this one we had a Fact-Finding Hearing

1 with the licensee on that case and the
2 licensee indicated that there was going to be
3 a transfer application coming in to the Agency
4 for this license.

5 Are you familiar with whether or
6 not that occurred?

7 MR. GORDY: Yes, it has.

8 CHAIRPERSON MILLER: It has
9 occurred?

10 MR. GORDY: Yes.

11 CHAIRPERSON MILLER: Okay. Do you
12 know --

13 MR. GORDY: Actually, at least
14 according to our records, it initially went
15 into safekeeping as part of a transfer. And
16 it was a transfer as a result of a landlord
17 agreement.

18 CHAIRPERSON MILLER: Okay. So but
19 it went into safekeeping in 2005, but then
20 just this year we heard that there was going
21 to be a transfer application?

22 MR. GORDY: Right, but we have

1 none.

2 CHAIRPERSON MILLER: Oh. You
3 haven't seen that one?

4 MR. GORDY: Right.

5 CHAIRPERSON MILLER: Oh, okay. So
6 that's what we were looking for.

7 MEMBER ALBERTI: Madam Chair? It
8 was on May 22, 2013 that we held a Fact-
9 Finding at which the representative of the
10 current license holder was here and another
11 party, a representative for a party
12 representing themselves as a perspective
13 owner/transferee of the license was also
14 present.

15 And at that time, the parties
16 represented to us that there would be a
17 transfer application and with a lease
18 agreement that was about to be very soon
19 finalized. So I think -- Mr. Gordy, am I
20 correct that since May 22, 2013, we have not
21 seen a transfer application for this? Is that
22 correct?

1 MR. GORDY: Actually, since May
2 22, 2013, our system reflects there is a
3 transferee application that was pending or is
4 pending and Acela, the system that we use,
5 reflects the transfer to a new location, but
6 doesn't indicate the source of the license or
7 the --

8 MEMBER ALBERTI: Okay.

9 MR. GORDY: -- application itself
10 has just -- has been pending since then.

11 MEMBER ALBERTI: What does that
12 mean?

13 MR. GORDY: That means that there
14 is either -- there was an application or at
15 least an interest to transfer the application
16 of some sort. We don't know what type of
17 transfer, be it voluntary, involuntary, but as
18 a result, it remains pending as there is not
19 enough additional information to transfer.

20 MEMBER ALBERTI: Okay. Do your
21 records reflect whether you have received any
22 documents, such as, I mean, if it was

1 transferred to a new location, a lease
2 agreement --

3 MR. GORDY: No.

4 MEMBER ALBERTI: -- or C of O or
5 something? Have you received any of that
6 information?

7 MR. GORDY: No.

8 MEMBER ALBERTI: So your -- so
9 this Agency has not received a lease agreement
10 between the parties?

11 MR. GORDY: Correct.

12 MEMBER ALBERTI: As promised in
13 May 22, 2013?

14 MR. GORDY: Correct.

15 MEMBER ALBERTI: And they were
16 very clear that it was the lease agreement,
17 the settlement and lease agreement was in that
18 and that they would be finalizing a transfer
19 application or moving forward to finalize a
20 transfer application on that date and we have
21 a transcript which we can refer to.

22 CHAIRPERSON MILLER: Well, I mean,

1 I do see Mr. Kline made a representation that
2 they would be filing a transfer application
3 within the next two weeks, so it sounds like
4 there was an application filed. It's just
5 what, not complete?

6 MR. GORDY: Right. The system
7 reflects the application as being pending, so
8 incomplete.

9 MEMBER RODRIGUEZ: Incomplete.

10 CHAIRPERSON MILLER: Does the
11 Agency ever follow-up with an applicant when
12 the application is incomplete?

13 MR. GORDY: We do.

14 CHAIRPERSON MILLER: You do.
15 Okay. So did you follow-up with this
16 licensee?

17 MR. GORDY: Yes. In fact, we
18 have.

19 MEMBER ALBERTI: Okay.

20 CHAIRPERSON MILLER: And what were
21 the results?

22 MR. GORDY: Still pending.

1 MEMBER ALBERTI: And I will tell
2 you, I'm reading from the transcript, Mr.
3 Kline says "I have also represented to you
4 that it is my belief that the parties will be
5 finalizing a lease agreement, and if it
6 doesn't happen, then again your concerns might
7 be justified."

8 In the context of the transcript,
9 it was certainly my impression that when he
10 said they will be finalizing it, he was
11 implying in a very short term. And if you
12 look at the whole transcript, I think you will
13 find that that's clear, because we were, at
14 that time, having them here asking them why --
15 what their plans were for putting this license
16 back into operation.

17 CHAIRPERSON MILLER: So, Mr.
18 Gordy, did you get any specifics when you
19 asked about the pending application? Like
20 when is the rest of it coming in or anything
21 like that?

22 MR. GORDY: No, not to my

1 knowledge.

2 CHAIRPERSON MILLER: Did you do it
3 personally or your staff?

4 MR. GORDY: Staff.

5 CHAIRPERSON MILLER: Oh, okay.
6 Okay.

7 MEMBER ALBERTI: So you --

8 CHAIRPERSON MILLER: And when was
9 that?

10 MEMBER ALBERTI: Oh, yeah.

11 MR. GORDY: The license, I
12 believe, was as we -- because the license has
13 been extended so many times --

14 CHAIRPERSON MILLER: Um-hum.

15 MR. GORDY: -- then, of course,
16 periodically the second, third year payments
17 are due. The license is still responsible for
18 maintaining the license while in safekeeping.
19 And at least since my arrival, I have had a
20 review of the safekeeping list to have staff
21 reach out to licensees or those who hold the
22 licenses in safekeeping to try to get movement

1 on the license or understanding a baseline of
2 where we stand with the application.

3 CHAIRPERSON MILLER: Okay. Good.
4 And where do they stand with their payments,
5 do you know? Are they current? Have they
6 been paying?

7 MR. GORDY: Give me one moment,
8 please. I do not believe they have paid.

9 CHAIRPERSON MILLER: Okay.

10 MEMBER ALBERTI: Mr. Gordy, I want
11 to make sure I understand. So when is the
12 last time your staff reached out to the owner
13 or their representative? Do you know?

14 MR. GORDY: I think our last
15 hearing would be -- was May 22, 2013. I think
16 that they were due or an extension, a review
17 of that extension from last May was due May
18 21, 2014 of this year.

19 MEMBER ALBERTI: Okay. So you
20 haven't talked -- they haven't -- no one has
21 contacted them since?

22 MR. GORDY: Right.

1 MEMBER ALBERTI: Okay.

2 CHAIRPERSON MILLER: Well, they
3 probably were contacted for this hearing
4 though.

5 MEMBER ALBERTI: Well, they were
6 contacted for this hearing. The licensee
7 didn't --

8 MR. GORDY: For the hearing.

9 CHAIRPERSON MILLER: Yeah.

10 MEMBER ALBERTI: Other than that.

11 CHAIRPERSON MILLER: Okay.

12 MEMBER ALBERTI: But they haven't
13 responded to this hearing and they haven't
14 submitted any additional documents.

15 MR. GORDY: Right.

16 MEMBER ALBERTI: How did you
17 contact them for this hearing?

18 MR. GORDY: A letter. The letter
19 sent by our Adjudication Committee.

20 MEMBER ALBERTI: To?

21 MR. GORDY: To --

22 MEMBER ALBERTI: To the owner?

1 MR. GORDY: Yes.

2 MEMBER ALBERTI: Was the
3 representative from 2013 notified?

4 MR. GORDY: (No audible answer.)

5 MEMBER ALBERTI: Well, you know,
6 Madam Chair, at this time, my recommendation
7 would be to cancel this license, since they
8 haven't shown up and give the licensee 10 days
9 in which to file an appeal.

10 CHAIRPERSON MILLER: I guess I was
11 thinking similarly, but not quite. Like send
12 them a notice of our intent to cancel and give
13 them a chance to respond within, you know --

14 MR. GORDY: 30.

15 CHAIRPERSON MILLER: -- 30 days or
16 something. Right. Because they --

17 MEMBER SILVERSTEIN: I think this
18 is such an extraordinary step, I would prefer
19 30.

20 CHAIRPERSON MILLER: Yeah, yeah.

21 MEMBER SILVERSTEIN: But just --

22 MEMBER ALBERTI: Well, I mean,

1 we --

2 MEMBER SILVERSTEIN: This is --

3 MEMBER ALBERTI: -- here is what I
4 was thinking.

5 MEMBER SILVERSTEIN: Yes.

6 MEMBER ALBERTI: If we cancel the
7 license and they respond in -- send us an
8 appeal within 10 days, all right, then we
9 could hear it. We could then schedule a Fact-
10 Finding Hearing to consider that appeal. And
11 if they can present us, at that time, with
12 justification for why we shouldn't cancel the
13 license, then I think that's fair.

14 CHAIRPERSON MILLER: Yeah.

15 MEMBER JONES: With all due
16 respect, the licensee was represented by
17 counsel. The counsel made promises on their
18 behalf and they were -- my understanding is
19 that they received notice of today's hearing.

20 CHAIRPERSON MILLER: But we don't
21 know that they received it.

22 MEMBER ALBERTI: Well, they were

1 sent a letter.

2 CHAIRPERSON MILLER: We know they
3 were --

4 MEMBER JONES: My understanding is
5 that they received notice of today's hearing.

6 CHAIRPERSON MILLER: Oh really?

7 MEMBER SILVERSTEIN: They were
8 sent a letter.

9 MEMBER JONES: And they were sent
10 a letter.

11 MEMBER SILVERSTEIN: Did they sign
12 for it?

13 MEMBER JONES: They were sent a
14 letter.

15 CHAIRPERSON MILLER: Right. They
16 were sent it. We don't know that they
17 received it.

18 MEMBER ALBERTI: Well, we will
19 make sure that the cancellation is signed for,
20 that it goes to their attorney and that will
21 put them on notice.

22 MEMBER JONES: Yes.

1 CHAIRPERSON MILLER: Well --

2 MEMBER ALBERTI: I just think that
3 that's, I mean, the most efficient way to deal
4 with this problem.

5 MEMBER SILVERSTEIN: I agree, but
6 there is a difference between the 10 days that
7 a protestant in an active protest where they
8 are up and you know who to contact and the
9 situation like this. It may be a little more
10 murky.

11 MEMBER JONES: I have no issue
12 with that. I just --

13 MEMBER SILVERSTEIN: Just I would
14 feel more comfortable with 30 days because of
15 the severity of what is going on here.

16 MEMBER ALBERTI: Well, 30 days for
17 what?

18 MEMBER JONES: My only issue with
19 that is that --

20 MEMBER SILVERSTEIN: That they be
21 given 30 days to respond.

22 CHAIRPERSON MILLER: To respond.

1 MEMBER RODRIGUEZ: Madam Chair?

2 MEMBER JONES: The licensee was
3 put on notice when they appeared before us
4 before.

5 MEMBER SILVERSTEIN: That was over
6 a year ago.

7 MEMBER JONES: Yes, they were put
8 on notice --

9 MEMBER SILVERSTEIN: Notice.

10 MEMBER JONES: -- that they could
11 be canceled.

12 MEMBER ALBERTI: Have you read the
13 transcript? Read the transcript, please, it
14 was very clear in that transcript --

15 MEMBER JONES: It is clear. There
16 is no ambiguity.

17 MEMBER ALBERTI: Right. There is
18 no ambiguity.

19 MEMBER JONES: Neither arbitrary
20 or capricious in how we made our statements to
21 the attorney.

22 MEMBER SILVERSTEIN: I agree

1 completely.

2 MEMBER JONES: Okay.

3 MEMBER RODRIGUEZ: Should we
4 discuss this back there?

5 CHAIRPERSON MILLER: We expected
6 them to come in very shortly with a lease and
7 with the transfer.

8 MEMBER JONES: Well, that wasn't
9 our expectations. That was their promise to
10 us.

11 MEMBER SILVERSTEIN: Exactly.

12 MEMBER JONES: That was their
13 promise.

14 CHAIRPERSON MILLER: Okay.

15 MEMBER ALBERTI: That was their
16 promise to us.

17 CHAIRPERSON MILLER: Okay. I
18 don't know that we said that they were then
19 going to be canceled.

20 MR. GORDY: Excuse me, might I --

21 CHAIRPERSON MILLER: In the
22 transcript. I don't see it.

1 MEMBER JONES: Mr. Gordy?

2 CHAIRPERSON MILLER: Yes.

3 MR. GORDY: Might I just add that
4 the pending status was due to there was -- we
5 had not received a purchase nor sale agreement
6 and that's what kept the application in flux.

7 CHAIRPERSON MILLER: Right.

8 MR. GORDY: Pending.

9 CHAIRPERSON MILLER: Right.

10 MEMBER RODRIGUEZ: One question I
11 have, --

12 CHAIRPERSON MILLER: Yes, Mr.
13 Rodriguez?

14 MEMBER RODRIGUEZ: -- Madam Chair,
15 is how we are to be sure that counsel is still
16 representing this party?

17 CHAIRPERSON MILLER: Right.

18 MEMBER RODRIGUEZ: If we contacted
19 the counsel, how can we be assured that they
20 are still representing this party?

21 MEMBER ALBERTI: Well, if we do a
22 cancellation when -- then we will do personal

1 service. We don't do personal service on
2 other notifications. But so one way of making
3 sure that this person gets it, and we are
4 guaranteed that we know that they get it, is
5 to cancel the license. They will be served
6 personally. They will have to sign for it and
7 then this Board will know that that person
8 knows about it. They will have 10 days to
9 respond.

10 MEMBER JONES: Is there any
11 consideration for cancellation within 10 days
12 pending confirmation of receipt of notice of
13 said hearing for today? Because that seems to
14 be the only question or consideration --

15 CHAIRPERSON MILLER: Yes.

16 MEMBER JONES: -- that is in limbo
17 is whether or not --

18 MEMBER ALBERTI: Yes. So, Board
19 Member Silverstein, do you want to give them
20 30 days to appeal?

21 MEMBER SILVERSTEIN: Yes.

22 CHAIRPERSON MILLER: But I would

1 rather we not cancel --

2 MEMBER ALBERTI: Cancel it and
3 then appeal in 30 days? I am willing to give
4 them 30 days to appeal. We cancel the license
5 and give them 30 days to appeal.

6 MEMBER JONES: I'll accept that,
7 Mr. Silverstein.

8 CHAIRPERSON MILLER: So I'm not
9 sure that we have reinstated licenses that
10 have been canceled and I would really rather
11 not --

12 MEMBER ALBERTI: We do it all the
13 time.

14 MEMBER JONES: We have done so.

15 MEMBER ALBERTI: We do it all the
16 time.

17 CHAIRPERSON MILLER: We do it all
18 the time? I don't --

19 MEMBER JONES: Our legal counsel--

20 MEMBER SILVERSTEIN: On a regular
21 basis.

22 MEMBER JONES: -- just responded

1 and said yes.

2 CHAIRPERSON MILLER: Is that a
3 problem?

4 MEMBER ALBERTI: Madam Chair, you
5 just -- you may have been party to signing a
6 whole -- more than a dozen cease and desist
7 orders, many of which we will reinstate when
8 they come current on their fees. So yes, we
9 do reinstate licenses.

10 CHAIRPERSON MILLER: I understand
11 what you are saying. I remember others.

12 MEMBER ALBERTI: Okay. So I'm
13 prepared to make a motion here.

14 MEMBER JONES: Thank you.

15 MEMBER ALBERTI: If you are. My
16 motion is that we cancel this license and in
17 the cancellation notice give them 30 days to
18 appeal that decision.

19 MEMBER JONES: I second.

20 MEMBER ALBERTI: Do you want to
21 take a vote, Madam Chair?

22 CHAIRPERSON MILLER: So the only

1 difference is you want to cancel it and all
2 I'm saying is 30 days, give them notice that
3 we intend to cancel.

4 MEMBER JONES: So --

5 MEMBER ALBERTI: I understand. I
6 understand.

7 CHAIRPERSON MILLER: Okay. Any
8 other comments on that motion?

9 MEMBER JONES: No.

10 CHAIRPERSON MILLER: Okay. Then
11 there has been a motion that has been
12 seconded.

13 All those in favor say aye.

14 MEMBER ALBERTI: Aye.

15 MEMBER JONES: Aye.

16 MEMBER SILVERSTEIN: Aye.

17 MEMBER RODRIGUEZ: Aye.

18 CHAIRPERSON MILLER: All those
19 opposed? Opposed. All those abstaining? So
20 the vote is 4-1-0. Okay.

21 So that means that the Board will
22 be issuing an order canceling the license and

1 notifying, at least, the licensee. I guess
2 there is another party here that we were aware
3 of, but I'm not sure if we notify them or not.

4 MEMBER ALBERTI: I think our
5 policy is to serve it on the licensee. And
6 they have to sign for it, so we will have --

7 CHAIRPERSON MILLER: Good.

8 MEMBER ALBERTI: I mean, we will
9 deal with it. If we don't -- you know, if
10 service isn't successful, we will deal with it
11 then, but our policy is to serve it and have
12 the licensee sign for it.

13 CHAIRPERSON MILLER: And have 30
14 days to --

15 MEMBER ALBERTI: 30 days to
16 appeal.

17 CHAIRPERSON MILLER: -- appeal the
18 cancellation. Okay. Thank you, Mr. Gordy.

19 MR. GORDY: You're welcome.

20 CHAIRPERSON MILLER: All right.

21 (Whereupon, the Fact-Finding
22 hearing in the above-entitled matter was

1 concluded at 5:30 p.m.)

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